

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)	
)	
AMENDING ARIZONA CODE OF)	Administrative Order
JUDICIAL ADMINISTRATION)	<u>No. 2011 - 117</u>
§ 6-202.01: ADULT INTENSIVE)	(Affecting Administrative
PROBATION EVIDENCE BASED)	Order No. 2010-26)
PRACTICES)	
)	

Pursuant to the Arizona Code of Judicial Administration § 1-201(E), the Chief Justice may adopt emergency administrative code proposals and technical changes in existing code sections by administrative order without prior distribution for comment and action by the Arizona Judicial Council. In the First Regular Session of the Fiftieth Legislature (2011), the Legislature passed House Bill 2404 (Chapter 263). The bill was signed by the Governor on April 26, 2011 and had an effective date of July 20, 2011. These technical changes reflect that amendment, and other recent statutory amendments.

Now, therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that Arizona Code of Judicial Administration § 6-202.01 is amended as indicated on the attached document. All other provisions of § 6-202.01 as adopted, remain unchanged and in effect.

Dated this 23rd day of November, 2011.

REBECCA WHITE BERCH
Chief Justice

ARIZONA CODE OF JUDICIAL ADMINISTRATION
Part 6: Probation
Chapter 2: Adult Services
Section 6-202.01: Adult Intensive Probation Evidence-Based Practices

~~Courts shall be governed by section 6-202, except and until approved by the Administrative Director to be governed by section 6-202.01.~~

A. Definitions. In this section the following definitions apply:

~~“Absconder” as provided in A.R.S. §13-105(1) means a probationer who has moved from the primary place of residence without permission of the probation officer and whose whereabouts are unknown~~ “means a probationer who has moved from the probationer’s primary residence without permission of the probation officer, who cannot be located within ninety days of the previous contact and against whom a petition to revoke has been filed in the superior court alleging that the probationer’s whereabouts are unknown. A probationer is no longer deemed an absconder when the probationer is voluntarily or involuntarily returned to probation service.”

“ACJIS” means Arizona Criminal Justice Information System.

“Actuarial risk” means measurable factors that have been correlated to the probability of offender recidivism that are gathered informally through routine interactions and observations with offenders and by formal assessment guided by instruments.

“Administrative director” means both the administrative director of the Administrative Office of the Courts and the director’s designee.

“Alcohol and drug testing” means any method of determining the level or identifiable substances in the body including, but not limited to, breathalyzer tests, blood tests, and urine samples.

“AOC” means Arizona Supreme Court, Administrative Office of the Courts.

“Arrest notification” means notice, by any means, that the probationer has been arrested, cited or had official contact with a law enforcement officer.

“Case plan” means the documented behavior change plan and supervision strategy developed by the supervising probation officer in collaboration with the probationer which clearly identifies the risk factors and needs of the probationer and how they will be addressed.

“Case record” means any record pertaining to a particular probationer maintained by the probation department in an electronic or paper medium.

“Collateral” means any individual or agency that has a relationship to a particular probationer that serves as a source of information or point of contact, including but not limited to friends,

family members, law enforcement, victims, community members, neighbors, treatment providers or other associates.

“Community restitution” means unpaid labor or services provided to a not-for-profit private or governmental agency.

“Court” means the superior court.

“Criminogenic need” means any issues of concern which are directly linked to criminal behavior that when addressed and changed affect a probationer’s risk for recidivism, which include, but are not limited to criminal personality, antisocial attitudes, values, beliefs, low self control, criminal peers, substance abuse, dysfunctional family, unemployment and lack of education.

“Direct case” means probationers actively supervised.

“Evidence-based practice” means strategies that have been shown through current, scientific research to lead to a reduction in recidivism.

“Hand counts” means the manual tabulation of all intensive probation case files in the probation department, conducted independently from any automated system.

“Intensive probation team” means one probation officer and one surveillance officer, two adult probation officers, or one probation officer and two surveillance officers, or one probation officer if a waiver of standards is granted.

“Pro-social activity” means any action or event that promotes sobriety and/or provides an opportunity for building a social support system that encourages a crime free lifestyle and improved community bonds.

“Residential treatment” means any type of licensed treatment or counseling where the probationer resides at the facility. “Short term residential treatment” is 30 days or less. “Long term residential treatment” is 31 days or more. Halfway houses are not considered residential treatment.

“Schedule” means documentation of the hours the probationer is to be at the probationer’s residence or other approved locations pursuant to A.R.S. §13-914(E)(4).

“Standardized assessment” means the state-approved tool to determine the offender’s needs related to criminal behavior and propensity to re-offend.

“Standardized reassessment” means the state-approved tool designed to measure changes in an offender’s needs related to criminal behavior and propensity to re-offend.

“Target interventions” means supervision related services determined by the probationer’s risk, criminogenic needs, and other factors such as temperament, learning style, motivation, gender and culture.

“Visual contact” means face-to-face communication with the intensive probationer at any place including but not limited to the probation department, the intensive probationer’s residence, place of employment, treatment location or community restitution placement to confirm compliance with conditions of probation and discuss progress, issues of concern and other appropriate matters. Contacts with probationers are not ends in themselves but are opportunities for officers to achieve specific objectives. These objectives include establishing rapport with the offender, assessing the offender’s criminogenic factors and triggers, developing and, when needed, modifying a supervision plan, and using both subtle and overt incentives and sanctions to guide the offender toward positive change.

B. Applicability. Pursuant to Az. Const. Art. 6, § 3 and A.R.S. §§ 13-913 through 13-920, the following requirements are adopted to govern the administration and operation of adult intensive probation programs. The AOC shall administer adult intensive probation programs on behalf of the supreme court. A.R.S. § 13-805(A) provides:

The trial court shall retain jurisdiction of the case for purposes of modifying the manner in which court-ordered payments are made until paid in full or until the defendant’s sentence expires. At the time the defendant completes the defendant’s period of probation or the defendant’s sentence or the defendant absconds from probation or the defendant’s sentence, the court shall enter both:

(1) A criminal restitution order in favor of the state for the unpaid balance, if any, of any fines, costs, incarceration costs, fees, surcharges or assessments imposed.

(2) A criminal restitution order in favor of each person entitled to restitution for the unpaid balance of any restitution ordered.

The provisions of this code section requiring a probation officer to request a criminal restitution order apply to a probationer who moved from the probationer’s primary residence on or after July 20, 2011 without permission of the probation officer.

Sections C through D – No changes

E. Budget Request Preparation.

1. A.R.S. § 13-920 provides:

The presiding judge of the superior court shall annually submit a proposed budget for the following fiscal year for the intensive probation program to the supreme court. The supreme court shall include the

counties' requests in its annual budget request and shall distribute to the participating counties the monies appropriated by the legislature for intensive probation.

2. The administrative director shall review each request, and may modify the request based on appropriate statewide considerations. The AOC shall include the court's request or the modified request in the supreme court's annual budget request. The administrative director shall allocate to the court monies appropriated by the legislature for intensive probation programs based on the proposed plan, availability of funds, caseload population, past year use, and program effectiveness.
3. The chief justice shall make the final determination if a court does not agree with the allocations and requests further review.
4. Each court requesting state funding shall support the budget request with written justification and explanation as required by the administrative director.
5. A.R.S. § 12-269(A) provides:

The administrative office of the courts shall not disburse any direct state aid for probation services monies, including motor pool costs, that are appropriated for juvenile intensive probation services pursuant to section 8-353, state aid for probation services pursuant to § 12-262, adult intensive probation pursuant to title 13, chapter 9 and community punishment programs pursuant to article 11 of this chapter to a county with a population of two million or more persons.

Sections F through H – No changes

I. Sentencing Provisions.

1. A.R.S. § 13-914(E) provides:

E. Intensive probation shall be conditioned on the offender:

1. Maintaining employment or maintaining full-time student status at a school subject to title 15 or title 32, chapter 30 and making progress deemed satisfactory to the probation officer, or both, or being involved in supervised job searches and community restitution work at least six days a week throughout the offender's term of intensive probation.
2. Paying restitution and probation fees of not less than seventy-five dollars unless, after determining the inability of the offender to pay the fee, the court assesses a lesser fee. Probation fees shall be deposited in the adult probation services fund established by § 12-267. Any amount ~~greater than forty dollars of the fee~~ assessed pursuant to this subsection paragraph shall ~~only~~ be used to supplement monies ~~currently~~ used for the salaries of adult probation and surveillance officers and for support

of programs and services of the superior court adult probation departments.

3. Establishing a residence at a place approved by the intensive probation team and not changing the offender's residence without the team's prior approval.
 4. Remaining at the offender's place of residence at all times except to go to work, to attend school, to perform community restitution and as specifically allowed in each instance by the adult probation officer.
 5. Allowing administration of drug and alcohol tests if requested by a member of the intensive probation team.
 6. Performing not less than forty hours of community restitution each month. Full-time students may be exempted or required to perform fewer hours of community restitution. For good cause, the court may reduce the number of community restitution hours performed to not less than twenty hours each month.
 7. Meeting any other conditions imposed by the court to meet the needs of the offender and limit the risks to the community, including participation in a program of community punishment authorized in title 12, chapter 2, article 11.
2. Good cause, in the context of reducing an intensive probationer's monthly community restitution requirement, includes but is not limited to:
 - a. Physical or mental disability;
 - b. Physical or mental illness;
 - c. Completion of residential treatment;
 - d. Working full time and attending at least six college credit hours or six hours at general equivalency diploma, adult basic education or vocational education classes per week;
 - e. Working full time and participating in a licensed intensive outpatient, or day treatment program;
 - f. Successful completion of any level of intensive probation; or
 - g. Progress with positive behavioral changes.
 3. An officer shall not recommend reduction of below twenty hours per month.
 4. The court shall exempt community restitution requirements while the probationer is incarcerated or participating in residential treatment.

5. A.R.S. § 13-918(B) provides:

The person's wages shall be paid directly to an account established by the chief adult probation officer from which the chief adult probation officer shall make payments for restitution, probation fees, fines and other payments. The balance of the monies shall be placed in an account to be used for or paid to the person or his immediate family in a manner and in such amounts as determined by the chief adult probation officer or the court. Any monies remaining in the account at the time the person successfully completes probation shall be paid to the person.

J. Caseload Limit. A.R.S. § 13-916(B) provides: "A two person intensive probation team shall supervise no more than twenty-five persons at one time, and a three person intensive probation team shall supervise no more than forty persons at one time." Pursuant to A.R.S. § 12-269(B):

A county with a population of two million or more persons shall maintain probation standards that are otherwise prescribed by law, except that the probation ratios and team compositions that are listed in sections 8-203, 8-353, 12-251 and 13-916 do not apply. The county shall maintain appropriate ratios of officers to probationers consistent with evidence based practices in differentiated case management...

K. - No changes

L. Waiver Provisions.

1. A.R.S. § 13-919 provides:

The requirements of § 13-916, subsection A, subsection B and subsection F, paragraph 2 may be waived for a county ~~with a population of fewer than three hundred thousand persons~~ if the case load of ~~every~~ adult probation officers supervising persons on intensive probation is not more than fifteen persons and the program requires visual contact with each probationer at least one time a week.

2. The presiding judge shall file a waiver request pursuant to A.R.S. § 13-916 with the AOC on a form prescribed by the administrative director. The administrative director shall determine whether to grant the waiver.
3. Waiver requests shall be renewed annually if the participating court expects to maintain caseloads of no more than fifteen persons on intensive probation supervision caseloads.
4. Minimum supervision requirements under the waiver provision shall remain in effect throughout the period of intensive probation supervision and shall include:

- a. Visual contact standards of one visual contact at least one time per week per probationer;
- b. Pursuant to A.R.S. § 13-914(E)(6), "...For good cause, the court may reduce the number of community restitution hours performed to not less than twenty hours each month" and,
- c. All requirements identified in subsections O (1-3) and O(6)(a-m) ACJA 6-202.01.

M. Program Operations.

1. Each probation department shall develop:
 - a. Policies and procedures that aim to reduce offender risk and the likelihood of future criminal behavior that are consistent with the principles of evidence-based practices.
 - b. Policies and procedures which require probation officers providing intensive supervision to use the results of the standardized assessment, as well as any other relevant information, when developing a case plan.
 - c. Policies and procedures which require that once every 180 days the supervising intensive probation officer administer the standardized reassessment and develop a new case plan.
 - d. Policies and procedures that require probation officers to utilize graduated responses of consequences and incentives to address violation behavior and promote positive behavioral change.
 - e. Policies and procedures which require supervising intensive probation officers to monitor intensive probationer compliance, behavioral changes and level of risk and request the court modify an intensive probationer's level of supervision when behavior and compliance with conditions of intensive probation have been achieved. Documentation regarding the compliance factors and justification for a requested level change shall be maintained in the intensive probationer's case record. A.R.S. § 13-917(A) provides:

The adult probation officer shall periodically examine the needs of each person granted intensive probation and the risks of modifying the level of supervision of the person. The court may at any time modify the level of supervision of a person granted intensive probation, or may transfer the person to supervised probation or terminate the period of intensive probation pursuant to A.R.S. § 13-901, subsection E.

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- f. Policies and procedures regarding the alcohol and drug testing of persons on intensive probation. The procedure shall address the methods used to select intensive

probationers for testing, the frequency of testing, and the type of test to be administered.

- g. Policies and procedures by which accurate and timely records of the completion of community restitution hours are maintained for each intensive probationer. Credit toward court -ordered community restitution requirements are awarded on the basis of actual hours completed unless authorized by the court.
 - h. Protocols for working with the office of the clerk of the court to establish a process by which supervising intensive probation officers are provided with accurate and timely information concerning collections.
 - i. Policies and procedures to ensure the collection of monies owed as a condition of intensive probation. Each probation department and intensive probation team shall immediately address any arrearage. Each probation department and intensive probation team shall also encourage the intensive probationer's payment of other assessments, such as child support or traffic fines, ordered by any court.
 - j. A written policy concerning the monitoring of intensive probationers' compliance with court-ordered or disclosed prescription medications for mental health or public health concerns. This policy shall include protocols to ensure routine and timely communication between the supervising intensive probation officer and physician regarding the intensive probationer's compliance with dosage requirements.
 - k. Policies and procedures to ensure the accurate and timely recording of information on persons placed on intensive probation in the ACJIS maintained by the Arizona department of public safety. Members of intensive probation teams shall respond to each arrest notification received through ACJIS or through any law enforcement officer.
2. Each intensive probation team shall:
- a. Administer the standardized assessment within 30 days of a probationer's placement on probation or initial release from custody if an assessment was not completed prior to sentencing;
 - b. Re-evaluate the adequacy and applicability of the court-ordered conditions of probation as part of the ongoing assessment and planning process and, if applicable, petition the court for modifications;
 - c. Utilize the results of the standardized assessment to establish a level of supervision and finalize a case plan within 30 days of a probationer's placement on intensive probation or initial release from custody. The officer shall ensure the case plan includes signatures of the probation officer, surveillance officer and probationer and objectives in the case plan are measurable;

- d. Develop and implement supervision strategies that are matched by standardized assessment results and criminogenic factors with the probationer's risks, needs and strengths that promote supervision goals and to provide effective supervision that is individualized, proportional and purposeful. Surveillance and other interventions shall be proportionately matched to emerging or decreasing risk factors;
- e. Target interventions to promote public safety;
- f. Evaluate the case plan on an ongoing basis;
- g. Administer the standardized reassessment every 180 days. The results of the standardized reassessment, along with the intensive probationer's compliance with the conditions of intensive probation and any other relevant factors, shall be used to develop a new case plan;
- h. Review the assessment and the previous case plan during the development of a new case plan to determine if a change in strategies is required to promote behavioral changes. Strategies shall be re-evaluated if there has been regress or no change in behavior;
- i. Monitor intensive probationer behavior and compliance with the conditions of intensive probation and, when warranted, petition the court to increase or decrease the intensive probationer's level of supervision;
- j. Respond to emerging risk indicators with graduated increases in the level of supervision, pursuant to probation departmental policy;
- k. Provide probationers with feedback on the results of an assessment or reassessment and progress with the established behavioral goals and conditions of probation and provide positive reinforcement to encourage behavioral changes;
- l. Provide probationers with information and referrals to social services that may promote the individual's ability to function under decreasing levels of supervision;
- m. Petition the court to reduce the level of supervision for a probationer that assesses as low risk on the standardized assessment or standardized reassessment. The intensive probation team shall document in the case record the circumstances for continuing probationers that assess as low risk on the standardized risk needs instrument on intensive probation supervision.
- n. Petition the court to modify the intensive probationer's supervision to standard probation or terminate the period of probation when the intensive probation team determines that intensive probation is no longer needed. If the court grants the modification from intensive supervision to standard supervision, the probation department shall transfer the case to a standard probation officer;

- o. Require each direct probationer under the intensive probation team's supervision to submit a schedule of activities for approval. Intensive probationers who are incarcerated or participating in residential treatment are exempt from this requirement. The intensive probation team shall monitor and enforce the approved schedule; and
 - p. Make a documented effort to locate an intensive probationer ~~absconder~~. If the intensive probationer is not located within 72 hours, the intensive probation team shall file a petition to revoke probation no later than the next business day and request that the court issue a warrant. The probation department's efforts to locate the intensive probationer shall continue until the intensive probationer is apprehended.
 - q. The probation officer shall seek a criminal restitution order upon the expiration of 90 days, pursuant to A.R.S. § 13-805(A)(1)(2), for a probationer who is an absconder as defined in A.R.S. § 13-105(1).
3. Pursuant to A.R.S. § 13-917(C) "The court shall notify the prosecuting attorney, and the victim on request, of any proposed modification of a person's intensive probation if that modification will substantially affect the person's contact with or safety of the victim or if the modification involves restitution or incarceration status."

4. A.R.S. § 13-917(B) provides:

The court may issue a warrant for the arrest of a person granted intensive probation. If the person commits an additional offense or violates a condition of probation, the court may revoke intensive probation at any time before the expiration or termination of the period of intensive probation. If a petition to revoke the period of intensive probation is filed and the court finds that the person has committed an additional felony offense or has violated a condition of intensive probation which poses a serious threat or danger to the community, the court shall revoke the period of intensive probation and impose a term of imprisonment as authorized by law. If the court finds that the person has violated any other condition of intensive probation, it shall modify the conditions of intensive probation as appropriate or shall revoke the period of intensive probation and impose a term of imprisonment as authorized by law.

5. A.R.S. § 13-918(B) provides that the intensive probationer's:

...wages shall be paid directly to an account established by the chief adult probation officer from which the chief adult probation officer shall make payments for restitution, probation fees, fines and other payments. The balance of the monies shall be placed in an account to be used for or paid to the person or his immediate family in a manner and in such amounts as determined by the chief adult probation officer or the court.

Any monies remaining in the account at the time the person successfully completes probation shall be paid to the person.

6. In the absence of specific court-ordered monthly payment schedules the chief probation officer shall establish monthly, bimonthly or weekly payment schedules for each person on intensive probation which emphasizes the payment of restitution and probation fees.
7. At the time a warrant is issued ~~for an absconder from intensive supervision~~, the intensive probationer is revoked from intensive probation, or at the time of the intensive probationer's death, any monies remaining in the account shall be disbursed to satisfy court-ordered payments in a manner and in amounts determined by the chief probation officer or the court. Any remaining balance in the account over \$5.00 shall, on request, be paid to the intensive probationer or the intensive probationer's beneficiary.
8. A person on intensive probation may have supervision transferred to another Arizona county provided the receiving county operates an intensive probation supervision program.
9. A person on intensive probation must reside in the state of Arizona until completion of the term of intensive probation, or until the court otherwise modifies the probation grant or discharges the person from supervision.

Sections N through P - No changes